

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WILMINGTON TRUST, NATIONAL	)	
ASSOCIATION, as Trustee for the benefit of	)	
the Registered Holders of BBCMS Mortgage	)	
Trust 2022-C15 Commercial Mortgage Pass-	)	No. 1:23-cv-08824-JPC-JLC
Through Certificates, Series 2022-C15, acting	)	
by and through its special servicer, Rialto	)	<b>DEFENDANTS AEVRI SALINA</b>
Capital Advisors, LLC,	)	<b>MEADOWS LLC AND MOSHE</b>
	)	<b>ROTHMAN’S ANSWER AND</b>
Plaintiff,	)	<b>AFFIRMATIVE DEFENSES TO THE</b>
v.	)	<b>SECOND AMENDED COMPLAINT</b>
	)	
AEVRI SALINA MEADOWS LLC;	)	
HAWTHORNE PROPERTY SERVICES,	)	
LLC; and MOSHE ROTHMAN	)	
	)	
Defendants.	)	

Defendants AEVRI SALINA MEADOWS LLC and MOSHE ROTHMAN hereby respectfully answer Plaintiff’s Complaint and set forth Defendants’ affirmative defenses. Defendants deny all allegations unless expressly admitted below.

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1, and therefore deny the allegations in paragraph 1.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2, and therefore deny the allegations in paragraph 2.

3. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3, and therefore deny the allegations in paragraph 3.

4. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4, and therefore deny the allegations in paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in paragraph 5, and therefore deny the allegations in paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6, and therefore deny the allegations in paragraph 6.

7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7, and therefore deny the allegations in paragraph 7.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8, and therefore deny the allegations in paragraph 8.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9, and therefore deny the allegations in paragraph 9.

10. Defendants admit that Aevri Salina Meadows LLC is a limited liability company organized under the laws of the state of Delaware, that it maintains an address at the location alleged, and that it holds real property at the addresses alleged. Defendants lack information sufficient to form a belief about Plaintiff's purpose in naming it as a Defendant, and therefore denies those allegations in paragraph 10. Defendants otherwise deny the allegations in paragraph 10.

11. Defendants admit the allegations in paragraph 11.

12. Defendants admit that Moshe Rothman is the sole member of Aevri Manager and is a natural person and citizen of the State of New York and has an address at the location alleged. Defendants lack information sufficient to form a belief about Plaintiff's purpose in naming it as a Defendant, and therefore denies those allegations in paragraph 12. Defendants otherwise deny the allegations in paragraph 12.

13. Defendants admit that the members listed on the formation documents of Aevri Investors are as alleged. Defendants lack knowledge or information sufficient to form a belief

about the truth of the allegations in paragraph 13, and therefore deny the allegations in paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14, and therefore deny the allegations in paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15, and therefore deny the allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16, and therefore deny the allegations in paragraph 16.

17. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17, and therefore deny the allegations in paragraph 17.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 18, and therefore deny the allegations in paragraph 18

19. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 19, and therefore deny the allegations in paragraph 19.

20. Defendants admit that Borrower is *at least* a citizen of New York, but lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20, and therefore deny the allegations in paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21, and therefore deny the allegations in paragraph 21.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22, and therefore deny the allegations in paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23, and therefore deny the allegations in paragraph 23.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24, and therefore deny the allegations in paragraph 24.

25. Defendants admit the allegations in paragraph 25.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny the allegations in paragraph 29.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30, and therefore deny the allegations in paragraph 30.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31, and therefore deny the allegations in paragraph 31.

32. Defendants deny the allegations in paragraph 32.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33, and therefore deny the allegations in paragraph 33.

34. Defendants deny the allegations in paragraph 34.

35. Defendants deny the allegations in paragraph 35.

36. Defendants deny the allegations in paragraph 36.

37. Defendants deny the allegations in paragraph 37.

38. Defendants deny the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45, and therefore deny the allegations in paragraph 45.

46. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 46, and therefore deny the allegations in paragraph 46.

47. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47, and therefore deny the allegations in paragraph 47.

48. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48, and therefore deny the allegations in paragraph 48.

49. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49, and therefore deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

51. Defendants deny the allegations in paragraph 51.

52. Defendants deny the allegations in paragraph 52.

53. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53, and therefore deny the allegations in paragraph 53.

54. Defendants admit receipt of the notice referenced but otherwise deny the allegations in paragraph 54, including any implication that the notice or any allegations made therein were accurate.

55. Defendants admit making the payment referenced but otherwise deny the allegations in paragraph 55.

56. Defendants deny the allegations in paragraph 56.

57. Defendants admit receipt of the notice referenced but otherwise deny the allegations in paragraph 57, including any implication that the notice or any allegations made therein were accurate.

58. Defendants admit that they have not paid Plaintiff since the date referenced but otherwise deny paragraph 58, including any implication as to what payments were due and to whom.

59. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 59, and therefore deny the allegations in paragraph 59.

60. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60, and therefore deny the allegations in paragraph 60.

61. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 61, and therefore deny the allegations in paragraph 61.

62. Defendants admit opening a bank account approximately contemporaneous with the closing but otherwise deny the allegations in paragraph 62.

63. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 63, and therefore deny the allegations in paragraph 63.

64. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 64, and therefore deny the allegations in paragraph 64.

65. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65, and therefore deny the allegations in paragraph 65.

66. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 66, and therefore deny the allegations in paragraph 66.

67. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in paragraph 67, and therefore deny the allegations in paragraph 67.

68. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68, and therefore deny the allegations in paragraph 68.

69. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 69, and therefore deny the allegations in paragraph 69.

70. Defendants admit receipt of the letters referenced but otherwise deny the allegations in paragraph 70, including any implication that the letters or any allegations made therein were accurate.

71. Defendant denies the allegation in paragraph 71.

72. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 72, and therefore deny the allegations in paragraph 72.

73. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 73, and therefore deny the allegations in paragraph 73.

74. Defendants admit receipt of the letter referenced but otherwise deny the allegations in paragraph 74, including any implication that the letter or any allegations made therein were accurate.

75. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 75, and therefore deny the allegations in paragraph 75.

76. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76, and therefore deny the allegations in paragraph 76.

77. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 77, and therefore deny the allegations in paragraph 77.

78. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in paragraph 78, and therefore deny the allegations in paragraph 78.

79. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79, and therefore deny the allegations in paragraph 79.

80. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 80, and therefore deny the allegations in paragraph 80.

81. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 81, and therefore deny the allegations in paragraph 81.

82. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 82, and therefore deny the allegations in paragraph 82.

83. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 83, and therefore deny the allegations in paragraph 83.

84. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 84, and therefore deny the allegations in paragraph 84.

85. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 85, and therefore deny the allegations in paragraph 85.

86. Defendant incorporates by reference its responses to the allegations incorporated by reference.

87. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 87, and therefore deny the allegations in paragraph 87.

88. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 88, and therefore deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants lack knowledge or information sufficient to form a belief about the



truth of the allegations in paragraph 90, and therefore deny the allegations in paragraph 90.

91. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 91, and therefore deny the allegations in paragraph 91.

92. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 92, and therefore deny the allegations in paragraph 92.

93. The allegations in paragraph 93 are prospective and a request for relief, not factual allegations. Defendants deny that Plaintiff is entitled to any relief. To the extent that any response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 93, and therefore deny the allegations in paragraph 93.

94. Borrower admits that it has an interest in the Property. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94, and therefore deny the allegations in paragraph 94.

95. Paragraph 95 is directed at Hawthorne. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 95, and therefore deny the allegations in paragraph 95.

96. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 96, and therefore deny the allegations in paragraph 96.

97. Paragraph 97 contains only legal conclusions. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 97, and therefore deny the allegations in paragraph 97.

98. Paragraph 98 contains only a legal conclusion and does not specify which conditions precedent exist and allege any facts as to why they are satisfied. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about

the truth of the allegations in paragraph 98, and therefore deny the allegations in paragraph 98.

99. Paragraph 99 contains only requests for relief. Defendants deny that Plaintiff is entitled to any relief. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 99, and therefore deny the allegations in paragraph 99.

100. The allegations in paragraph 100 are prospective and a request for relief, not factual allegations. Defendants deny that Plaintiff is entitled to any relief. To the extent that any response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 100, and therefore deny the allegations in paragraph 100.

101. Defendant incorporates by reference its responses to the allegations incorporated by reference.

102. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 102, and therefore deny the allegations in paragraph 102.

103. Defendants deny that Rothman is a “principal owner of the Borrower” and refers Plaintiff to the Borrower’s actual ownership structure. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 103, and therefore deny the allegations in paragraph 103.

104. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 104, and therefore deny the allegations in paragraph 104.

105. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 105, and therefore deny the allegations in paragraph 105.

106. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 106 and therefore deny the allegations in paragraph 106.

107. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 107, and therefore deny the allegations in paragraph 107.

108. Paragraph 108 is a legal conclusion or request for relief. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 108, and therefore deny the allegations in paragraph 108.

109. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 109, and therefore deny the allegations in paragraph 109.

110. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 110, and therefore deny the allegations in paragraph 110.

111. Defendant incorporates by reference its responses to the allegations incorporated by reference.

112. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 112, and therefore deny the allegations in paragraph 112.

113. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 113, and therefore deny the allegations in paragraph 113.

114. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 114, and therefore deny the allegations in paragraph 114.

115. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 115, and therefore deny the allegations in paragraph 115.

116. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 116, and therefore deny the allegations in paragraph 116.

Further, there is no Exhibit 17 attached to the Complaint.

#### **PRAYER FOR RELIEF**

With respect to Plaintiff's Prayer for Relief included at the conclusion of the Complaint, no response is required. To the extent one is, Defendants expressly deny any and all liability, and deny that Plaintiff is entitled to any relief whatsoever, whether monetary, injunctive, fees, costs or otherwise, and whether requested in Plaintiff's Prayer for Relief or otherwise.

### **DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury on all issues so triable.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiff's claims fail because there is no subject matter jurisdiction over this action. For example, Defendants fail to establish that the individuals named as members of Aevri Salina Investors LLC (or of Hawthorne) were actually members at the time of suit and that they are actually citizens of the states alleged and actually permanently reside at the addresses alleged. Defendants believe that discovery may show that one or more of the members transferred their interests to third parties who may either be citizens of Delaware or U.S. citizens residing overseas, which would destroy diversity jurisdictions.

#### **Second Affirmative Defense**

Plaintiff's claims fail because its Complaint fails to state a claim upon which relief may be granted.

#### **Third Affirmative Defense**

Plaintiff's claims fail because the agreements alleged were not duly executed and acknowledged, there was no meeting of the minds as to the terms, the versions recorded were not the versions executed, or there was a mistake. Among other things, Defendants were asked to sign and execute acknowledgements of blank signature pages and did not receive a closing binder to

sign containing any final agreed-upon terms.

**Fourth Affirmative Defense**

Plaintiff's claims are barred by the doctrines of unclean hands, waiver, and estoppel, based on what discovery may reveal.

**Fifth Affirmative Defense**

Plaintiff's claims fail due to lack of constitutional, statutory, prudential, or contractual standing.

**Sixth Affirmative Defense**

Plaintiff's claims fail because the purported assignment was invalid.

**Seventh Affirmative Defense**

Plaintiff's claims fail because the original lender is a necessary and indispensable party.

**Eighth Affirmative Defense**

Plaintiff's claims for enforcement of the guaranty are barred because Plaintiff cannot simultaneously sue for debt and for foreclosure under New York's single action doctrine.

**Ninth Affirmative Defense**

The guaranty is unenforceable in whole or in part due to a lack of meeting of the minds, failure to correspond precisely with the obligations purportedly guaranteed, insufficient notice to the guarantor, material alteration of the underlying debt, the lender's material impairment of collateral, insufficient notice of foreclosure sale, failure to conduct a foreclosure sale in a commercially unreasonable manner, or it being inequitable to hold the guarantor to the full extent of the debt.

**Tenth Affirmative Defense**

Plaintiff's claims, in whole or in part, are barred by the statute of limitations.

Dated: February 19, 2025

Respectfully submitted,

By: /s/ Nathaniel J. Kritzer  
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